SUPREME COURT COPY

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April 14, 2017

SUPREME COURT
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Jorge Navarrete Clerk

Deputy

The Honorable Presiding Justice Cantil-Sakauye
The Honorable Associate Justices
Supreme Court of California
Earl Warren Building
350 Mc Allister St.
San Francisco, Ca 94102

Re: **Case No. S227106** *American Civil Liberties Union of Southern California, et. al. vs. Superior Court of Los Angeles, et. al.*
Second Appellate District, Division Three Case No. B259392

Dear Presiding Justice Cantil-Sakauye and Associate Justices,

Amici Curiae, The California State Sheriffs' Association, California Police Chiefs Association and the California Peace Officers' Associations submit the following Reply to Petitioners' Supplemental Letter Brief:

REPLY TO SUPPLEMENTAL LETTER BRIEF

In their supplemental brief, Petitioners commence their case for disclosure of APLR data pursuant to Government Code section 6255 by emphasizing the trial court's acknowledgement of a strong public interest in the public disclosure of APLR data. However, the trial court 's decision denying the ACLU's petition focused on the overriding public interest and concern that a greater harm would occur from public disclosure because of (1) the potential for criminals to interfere with policing and (2) the public's "strong privacy interest in the location information contained in ALPR data."

The Superior Court Correctly Determined There is a Significant Public Interest in Preventing Public Disclosure of ALPR Data.

Petitioners challenge the trial court's factual findings and focus on what they perceive as error by the trial court's recognition of the law enforcement concerns articulated by Sergeant Gaw and Sergeant Gomez. Petitioners attempt to dismiss the law enforcement concerns articulated by Gomez and Gaw as speculation and unqualified expertise. However, Sergeants Gaw and Gomez concerns, such as the sensitive nature of the data and its potential for manipulation to the detriment of the law enforcement and public interests, provided substantial

support for the trial court's factual findings. Real Parties in Interest, the County of Los Angeles have thoroughly discussed the Standard of Review at pages 5-7 of their Opposition to Petition, noting that Petitioners' challenges to the trial court's statement of decision must be on record and the statement should remain undisturbed if based on substantial evidence.

Petitioners advocate for disclosure of APLR data as public records to advance what they claim is an overriding interest that speculates on the potential "misuse of surveillance technologies." Petitioners make this assertion without any evidentiary support whatsoever. In addition, Petitioners have failed to reconcile how making these sensitive records public will protect the public's privacy interests in these records. Petitioners ignore the fact that making investigative raw data collected by police completely open and accessible to the public will likely render police use of this particular technology essentially ineffective.

While Petitioners assert that the data collected from ALPR equipment could be sanitized and redacted through several methods, they completely fail to address that disclosure of the "time, date, and location of each scan"1 would undermine law enforcement investigations. Specifically, this information would alert those engaged in criminal activity where law enforcement may be focusing their investigative efforts. For you see, while those engaged in criminal activities unequivocally know where and when they are engaged in their nefarious activities, law enforcement can only learn that information through investigative efforts, such as by use of ALPR data and other investigative techniques. By obtaining the requested information from law enforcement, those engaged in criminal activity would then know that they needed to move the location of their activities, such as a drug manufacturing facility, to another place that is not under law enforcement scrutiny. Accordingly, the mere fact that the so-called "anonymized" information would be released does in fact undermine the investigative efficacy of ALPR technology.

Petitioners' Suggested "Surgical Separation" and Redaction to Address the Threatened Privacy Concerns of Their ALPR Requests is an Unsupported, Unnecessary and Ineffective Burden.

Petitioners seem to recognize the legitimacy of the privacy interests threatened by their PRA requests for the ALPR data and they lean heavily on the notion of "redaction and anonymization" of the data to resolve the threat to privacy interests, citing Los Angeles County Board of Supervisors v. Superior Court (2016) 2 Cal.5th 282, 292 [212 Cal.Rptr.3d 107, 112, 386 P.3d 773, 777–78]. They also ignore or dismiss the Real Party in Interest's Sergeant Gomez's statement (Decl., ¶ 8, p. 3) that "segregating data associated with active criminal investigations is not feasible" and "the system utilized by LAPD does not have the capability as a native function to segregate data based on specific parameters".

CPRA requests may invariably impose some burden on public agencies to locate records with reasonable effort. Such reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 627 [214 Cal.Rptr.3d 274, 288, 389 P.3d 848, 860] and "public agencies are not

1 Petitioners' Supplemental Letter Brief, p. 6.

required to attempt selective disclosure of records that are not "reasonably segregable." Los Angeles County Board of Supervisors v. Superior Court, supra.

Many courts recognize that "custodians of computerized public records need not manipulate that data in order to create a new record upon request of a member of the public" Office of State Court Adm'r v. Background Information Services, Inc. (Colo. 1999) 994 P.2d 420, 429–30. In Westbrook v. County of Los Angeles, 27 Cal.App.4th 157, 32 Cal.Rptr.2d 382, 387 (1994), the Court of Appeal declined to order a municipal court to release its computer-generated court records. The court determined that the records were compiled without the consent of the subjects, and that the California constitutional right to privacy prevented their dissemination in a computerized form.

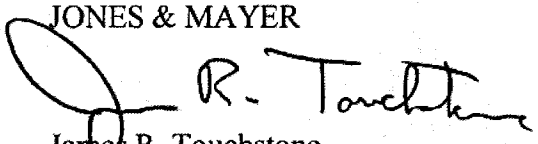
The Freedom of Information Act applies only to existing records and does not require the creation of new records. 11 C.F.R. § 4.4. (See also Cal. Gov. Code, § 6253.9(f): "Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.") Moreover, as noted in Real Party in Interest, County's supplemental brief, p. 8, the redactive and anonymization process would effectively nullify the utility of the disclosure.

As discussed earlier, Petitioners' quest to make ALPR data public to expose the hypothetical compromise of individual civil liberties by the police abuse of ALPR is self-defeating. The far greater threat to the privacy interests lies in disclosure of the ALPR data as a public record.

The Public and Law Enforcement interests in Homeland Security, preserving infrastructure, and accelerated access to information in solving crimes are best served by nondisclosure of ALPR data under the Section 6255, for all of the reasons discussed above and in Amici's Supplemental Letter Brief.

Respectfully submitted,

JONES & MAYER



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PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF ORANGE) ss.

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 3777 North Harbor Blvd. Fullerton, Ca 92835.

On April 14, 2017, I served the foregoing document described as **SUPPLEMENTAL REPLY BRIEF** on each interested party listed on the attached service list.

XX (VIA MAIL) I placed the envelope for collection and mailing, following the ordinary business practices.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 14, 2017, at Fullerton, California.

Sandra K. Sandoval

Case No. S227106 *American Civil Liberties Union of Southern California, et. al. vs. Superior Court of Los Angeles, et. al.*

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